

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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RODRIGO CARRERA, individually and on behalf :
of all others similarly situated, :
: Plaintiff, : Civil Action No.:
: : 3:15-cv-03208 (MAS) (LHG)
-against- : : **ANSWER TO FIRST AMENDED**
MAJOR ENERGY SERVICES, LLC, : **CLASS ACTION COMPLAINT**
RESPOND POWER, LLC and JOHN DOES 1-25, :
: Defendants. :
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Defendants Major Energy Services, LLC (“Major Energy”) and Respond Power, LLC (“Respond” and collectively with Major Energy, “Defendants”), by and through their attorneys, Herrick, Feinstein LLP, state the following for their answer to the Amended Complaint, dated July 20, 2015 (the “Amended Complaint”), filed by plaintiff Rodrigo Carrera (“Plaintiff”):

ANSWER

1. Defendants deny the allegations contained in paragraph 1 of the Amended Complaint.
2. Defendants deny the allegations contained in paragraph 2 of the Amended Complaint.
3. The allegations contained in paragraph 3 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a

response is required, Defendants deny the allegations contained in paragraph 3 of the Amended Complaint.

4. The allegations contained in paragraph 4 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 4 of the Amended Complaint.

5. The allegations contained in paragraph 5 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 5 of the Amended Complaint.

6. The allegations contained in paragraph 6 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 6 of the Amended Complaint.

7. The allegations contained in paragraph 7 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 7 of the Amended Complaint.

8. Defendants admit the allegations contained in paragraph 8 of the Amended Complaint.

9. Defendants admit the allegations contained in paragraph 9 of the Amended Complaint.

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Amended Complaint.

11. Defendants admit the allegations contained in paragraph 11 of the Amended Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Amended Complaint.

13. Defendants deny that Major Energy and Respond Power are the same company, and neither admit nor deny the remainder of statements contained in paragraph 13 of the Amended Complaint, as they make no allegations.

14. Defendants neither admit nor deny the statements contained in paragraph 14 of the Amended Complaint, as they make no allegations.

15. The allegations contained in paragraph 15 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 15 of the Amended Complaint.

16. Defendants neither admit nor deny the statements contained in paragraph 16 of the Amended Complaint, as they make no allegations, except deny that Defendants violated the TCPA.

17. The allegations contained in paragraph 17 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 17 of the Amended Complaint.

18. The allegations contained in paragraph 18 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 18 of the Amended Complaint.

19. The allegations contained in paragraph 19 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 19 of the Amended Complaint.

20. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Amended Complaint.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Amended Complaint as the phrase “belonging to the Defendant” is vague and ambiguous.

22. Defendants deny the allegations contained in paragraph 22 of the Amended Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Amended Complaint.

25. Defendants deny the allegations contained in paragraph 25 of the Amended Complaint.

26. Defendants deny the allegations contained in paragraph 26 of the Amended Complaint.

27. Defendants deny the allegations contained in paragraph 27 of the Amended Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Amended Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Amended Complaint.

30. Defendants deny the allegations contained in paragraph 30 of the Amended Complaint.

31. Defendants deny the allegations contained in paragraph 31 of the Amended Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Amended Complaint.

33. Defendants deny the allegations contained in paragraph 33 of the Amended Complaint.

34. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Amended Complaint, as they are vague and ambiguous.

35. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Amended Complaint.

36. The allegations contained in paragraph 36 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 36 of the Amended Complaint.

37. The allegations contained in paragraph 37 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a

response is required, Defendants deny the allegations contained in paragraph 37 of the Amended Complaint.

38. Defendants admit the allegations contained in paragraph 38 of the Amended Complaint.

39. Defendants deny the allegations contained in paragraph 39 of the Amended Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Amended Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Amended Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Amended Complaint.

43. Defendants neither admit nor deny the statements contained in paragraph 43 of the Amended Complaint, as they make no allegations, except deny that Plaintiff or the proposed class are entitled to any of the relief stated therein.

CLASS ACTION ALLEGATIONS

44. Defendants neither admit nor deny the statements contained in paragraph 44 of the Amended Complaint, as they make no allegations, except Defendants deny that this action can be certified as a class action.

45. Defendants neither admit nor deny the statements contained in paragraph 45 of the Amended Complaint, as they make no allegations.

46. Defendants neither admit nor deny the statements contained in paragraph 46 of the Amended Complaint, as they make no allegations.

47. Defendants deny the allegations contained in paragraph 47 of the Amended Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Amended Complaint.

49. Defendants neither admit nor deny the statements contained in paragraph 49 of the Amended Complaint, as they make no allegations, except deny that Plaintiff or the proposed class are entitled to any of the relief stated therein.

50. Defendants deny the allegations contained in paragraph 50 of the Amended Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Amended Complaint.

52. Defendants deny the allegations contained in paragraph 52 of the Amended Complaint.

a. Defendants deny the allegations contained in paragraph 52(a) of the Amended Complaint.

- b. Defendants deny the allegations contained in paragraph 52(b) of the Amended Complaint.
- c. Defendants deny the allegations contained in paragraph 52(c) of the Amended Complaint.
- d. Defendants deny the allegations contained in paragraph 52(d) of the Amended Complaint.
- e. Defendants deny the allegations contained in paragraph 52(e) of the Amended Complaint.
- f. Defendants deny the allegations contained in paragraph 52(f) of the Amended Complaint.
- g. Defendants deny the allegations contained in paragraph 52(g) of the Amended Complaint.
- h. Defendants deny the allegations contained in paragraph 52(h) of the Amended Complaint.
- i. Defendants deny the allegations contained in paragraph 52(i) of the Amended Complaint.
- j. Defendants deny the allegations contained in paragraph 52(j) of the Amended Complaint.

53. Defendants deny the allegations contained in paragraph 53 of the Amended Complaint.

54. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Amended Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Amended Complaint.

CAUSES OF ACTION

COUNT I

**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227(b) *ET SEQ.*
(On behalf of the Autodialer Class)**

57. Defendants repeat and reiterate each and every one of the foregoing admissions and denials made in response to paragraphs “1” through “56” of the Amended Complaint with the same force and effect as if set forth herein at length.

58. Defendants deny the allegations contained in paragraph 58 of the Amended Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Amended Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Amended Complaint.

COUNT II

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT**
47 U.S.C. § 227(b) *ET SEQ.*
(On behalf of the Autodialer Class)

61. Defendants repeat and reiterate each and every one of the foregoing admissions and denials made in response to paragraphs “1” through “60” of the Amended Complaint with the same force and effect as if set forth herein at length.

62. Defendants deny the allegations contained in paragraph 62 of the Amended Complaint.

63. Defendants deny the allegations contained in paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Amended Complaint.

COUNT III

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227(c) *ET SEQ.*
(On behalf of the DNC Class)

65. Defendants repeat and reiterate each and every one of the foregoing admissions and denials made in response to paragraphs “1” through “64” of the Amended Complaint with the same force and effect as if set forth herein at length.

66. Defendants deny the allegations contained in paragraph 66 of the Amended Complaint.

67. The allegations contained in paragraph 67 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 67 of the Amended Complaint.

68. Defendants deny the allegations contained in paragraph 68 of the Amended Complaint.

69. Defendants deny the allegations contained in paragraph 69 of the Amended Complaint.

COUNT IV

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227(c) *ET SEQ.* (On behalf of the DNC Class)

70. Defendants repeat and reiterate each and every one of the foregoing admissions and denials made in response to paragraphs “1” through “69” of the Amended Complaint with the same force and effect as if set forth herein at length.

71. Defendants deny the allegations contained in paragraph 71 of the Amended Complaint.

72. The allegations contained in paragraph 72 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 72 of the Amended Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Amended Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint, both in whole and in part, fails to state a claim on which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff and the putative class members' claims are barred, in whole or in part, because no act or omission by Defendants is the proximate cause of any loss or damage to Plaintiffs.

THIRD AFFIRMATIVE DEFENSE

Plaintiff and the putative class members' claims are barred, in whole or in part, by the doctrine of laches and/or waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members' claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

As a result of their own acts or omissions, Plaintiff and the putative class members are estopped in whole or in part, from obtaining the relief sought in the Amended Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members have not suffered any cognizable injury or damages to their respective businesses or property as a result of any acts or omissions of Defendants.

SEVENTH AFFIRMATIVE DEFENSE

There is no direct or proximate causal connection between any act by Defendants and the injuries or harm alleged by Plaintiff and the putative class members.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members assumed the risk of the damages and injuries alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members lack standing.

TENTH AFFIRMATIVE DEFENSE

Defendants acted without any malicious motive and did not intend that Plaintiff and the putative class members be injured by the alleged actions.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants have at all times acted reasonably, with due care, and in good faith with respect to this matter.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members' claims are time-barred by applicable limitations periods.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that the incident and damages complained of were caused solely by the separate, independent and/or negligent actions and/or inactions of third persons over whom Defendants exercised no control and with whom Defendants had no relationship.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims are barred, in whole or in part, insofar as Plaintiff and the putative class members have an "established business relationship" with Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to assert additional defenses if and to the extent that such defenses are applicable.

WHEREFORE, Defendants demand judgment dismissing the Amended Complaint, awarding legal fees and costs of suit, and granting such other and further relief as the Court may deem just and equitable.

Dated: Newark, New Jersey
April 12, 2016

HERRICK, FEINSTEIN LLP

By: /s/ David R. King
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*Attorneys for Defendants
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